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In re Application of : George M. Alleman, Jr. et al
For : ALL-TERRAIN UNDERCARRIAGE
Serial No. : 09/411,106
Filed : October 4, 1999
Group Art Unit : 1725
Examiner : Colleen P. Cooke
Our Docket No. : L-12396

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**SUPPLEMENT TO APPEAL BRIEF
FILED DECEMBER 31, 2001**

Asst. Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on 03-11-02.
Date of Signature
03-11-02
H. Cook

This is a supplement to the Appeal Brief timely filed on December 31, 2001. The present appeal is from the decision of the Examiner dated July 31, 2001, finally rejecting claims 1-31 and 48-82 in the above-identified patent application. No claims are allowed.

Appellants received a Notification of Non-Compliance With 37 CFR 1.192(2) dated February 22, 2002. The Notification indicated that the Appeal Brief filed on January 24, 2002 was defective, since the brief did not contain a correct copy of the claims on appeal. Appellants disagree.

I. FILING DATE OF APPEAL

The Notification indicated that the Appeal Brief was filed on January 24, 2002. The Appeal Brief was filed on December 31, 2001, as indicated by the Certificate of Mailing on the first page

of the Appeal Brief. Consequently, pursuant to 37 CFR 1.8, the Appeal Brief was filed and received in the Patent and Trademark Office on December 31, 2001.

II. THE SECOND ISSUE IN THE APPEAL BRIEF IS MOOT

The Examiner stated that Issue 2 of the Appeal Brief is drawn to canceled claims, thus is moot. Appellants agree. On pages 12-13 of the Appeal Brief, Appellants stated that "the Examiner's final rejection of claims 62-70 and 76-81 under 35 U.S.C. §112, first paragraph, is moot."

III. THE PROPOSED AMENDMENT DOES NOT RAISE NEW ISSUES

The Examiner stated that no amendment had been filed, only a "proposed amendment," thus the clean copy of the claims was incorrect for including the proposed amendments. The Examiner further stated that the proposed amendment would not be entered because it would raise the issue of new matter.

In Section IV titled "STATUS OF AMENDMENTS" on page 3 of the Appeal Brief, Appellants stated that a proposed amendment to claims 1, 9, 10, 15, 48, 57-59, 73, 74, and 82 was being filed with the Appeal Brief. Appellants explained that the Proposed Amendment to the claims corrected several grammatical errors in the claims and placed the claims in better form for purposes of appeal. Appellants also stated that the claims included in the Appendix of Claims reflect the requested amendments to the claims. Appellants further requested that the Proposed Amendment be entered for purposes of the present Appeal.

The Examiner stated in the Notification of Non-Compliance dated February 22, 2002 that the proposed amendments would not be entered because such amendments raised the issue of new matter. Appellants disagree with the Examiner's conclusion. Appellants therefore request that the Examiner reconsider the non-entry of the proposed amendment. Alternatively, if the Examiner

maintains that the Proposed Amendment will not be entered, Appellants have submitted herein a Corrected Appendix of Claims that includes all the amendments in the newly submitted Amendment for Appeal.

Amendments to claims can be filed with an appeal brief or before jurisdiction has passed to the Board. See MPEP §1207; 37 C.F.R. §1.116. Such amendments will be entered so as to expedite the resolution of the patent application under final rejection unless the amendment necessitates a new search, raises new issues of new matter, presents additional claims without canceling a corresponding number of finally rejected claims, or otherwise introduces new issues. See MPEP §1207.

The Examiner rejected the Proposed Amendment on the assertion that the amendments to the claims raised the issue of new matter. However, the Examiner did not indicate which claim or claims have been amended such that the claim or claims contain such alleged new matter. As set forth below, the amendments to the claims did not introduce new matter.

Claim 1 was proposed to be amended to delete the word "positioned" in line 7 and to substitute the word "a" for the word "the" in line 8. The word "positioned" was removed to correct a grammatical mistake in the claim. Claim 1 requires the center of gravity of the welder and/or power supply to "be positioned between" or "lie between" the front and rear axles. The words "positioned" and "lies" were both included in the claim, thus were redundant and made claim 1 indefinite under 35 USC §112(2). This grammatical mistake was not identified by the Examiner or Appellants during the prosecution of the patent application. Upon review of claim 1 during the preparation of the Appeal Brief, Appellants identified this grammatical error and corrected such error in the Proposed Amendment filed with the Appeal Brief. Appellants submit that the deletion of the

word "positioned" does not enlarge or contract the scope of claim 1. Consequently, the deletion of the word "positioned" does not raise an issue of new matter. In addition, the substitution of the word "the" for the word "a" corrects an antecedent basis problem not identified by the Examiner or Appellants during the prosecution of the patent application. Appellants further submit that this amendment to claim 1 does not raise an issue of new matter. The amendments to claim 1 are included in the Amendment for Appeal and are reflected in the Corrected Appendix of Claims attached hereto.

Claims 9 and 10 were proposed to be amended to include the word "are" between the words "wheels" and "positioned" in lines 1 and 2 of the claims. The addition of the word "are" corrects a grammatical error in the claims that was not identified by the Examiner or Appellants during the prosecution of the patent application. Appellants submit that these amendments to claims 9 and 10 do not raise an issue of new matter. The amendments to claims 9 and 10 are included in the Amendment for Appeal and are reflected in the Corrected Appendix of Claims attached hereto.

Claim 15 was proposed to be amended to substitute the word "lies" for the word "lying", and substitute the phrase "of said base" for the word "plane" in line 1. The substitution of the word "lies" for the word "lying" corrects a grammatical error not identified by the Examiner or Appellants during the prosecution of the patent application. Appellants submit that this amendment to claim 15 does not raise an issue of new matter. Appellants also proposed to add the phrase "of said base" to clarify the top surface referred to in the claim. Appellants submit that this amendment to claim 15 also does not raise an issue of new matter. The deletion of the word "plane" was also proposed solely for purposes of clarifying the scope of claim 15. However, upon further review of claim 15, the word "plane" should remain in claim 15 now that the phrase "of said base" has been added for

purposes of clarification. Consequently, Appellants withdraw the proposed deletion of the word "plane" from line 1 of claim 15. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 15. Appellants submit that these amendments to claim 15 do not raise an issue of new matter.

Claim 48 was proposed to be amended to include the word "a" between the words "moving" and "welder" and the words "or" and "power" in line 1. The addition of the word "a" corrects a grammatical error in the claims that was not identified by the Examiner or Appellants during the prosecution of the patent application. Claim 48 was also proposed to be amended to remove the words "positioned on said base" in line 6. Appellants proposed to remove this phrase solely for purposes of clarifying the claim language. Upon further review of the claim, Appellants have determined that the phrase should remain in the claim. Consequently, Appellants withdraw the proposed deletion of the phrase "positioned on said base" from line 5 of claim 48. Appellants have further determined that claim 48 needs to be amended to include the term "base structure", not "base" throughout the claim to maintain term continuity throughout the claim. Accordingly, claim 48 has been amended to correct this error which was not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 48. Appellants submit that these amendments to claim 48 do not raise an issue of new matter.

Claims 49, 50, and 52-55 have been amended to change the word "base" to the phrase "base structure" to correct an antecedent basis error in the claims. This antecedent basis error was not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect this change to claims 49, 50,

and 52-55. Appellants submit that these amendments to claims 49, 50, and 52-55 do not raise an issue of new matter.

Claim 57 was proposed to be amended to insert the phrase "at least one" between the words "said" and "front" in line 1 and between the words "said" and "rear" in line 2. This amendment was made to correct an antecedent basis error that was not identified by the Examiner or Appellants during the prosecution of the patent application. Claim 57 was also proposed to be amended to substitute the word "wheel" for the word "wheels" in lines 2 and 3. This amendment was made to correct a grammatical error that was not identified by the Examiner or Appellants during the prosecution of the patent application. Upon further review of claim 57, Appellants have determined that the word "base" needs to be changed to the phrase "base structure" to correct another terminology error in claim 57. This error was also not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 57. Appellants submit that these amendments to claim 57 do not raise an issue of new matter.

Claim 58 was proposed to be amended to include the word "said" between the words "with" and "at" in line 2. The inclusion of the word "said" corrects an antecedent basis error which was not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect this amendment to claim 58. Appellants submit that this amendment to claim 58 does not raise an issue of new matter.

Claim 59 was proposed to be amended to include the phrase "at least one" between the words "said" and "rear" in line 3. The inclusion of the phrase "at least one" corrects an antecedent basis error which was not identified by the Examiner or Appellants during the prosecution of the patent

application. The Amendment for Appeal and the Corrected Appendix of Claims reflect this amendment to claim 59. Appellants submit that this amendment to claim 59 does not raise an issue of new matter.

Claim 73 was proposed to be amended to substitute the word "or" for the word "and/or" between the words "welder" and "power" in lines 2, 3, and 4. The substitution of the word "or" for the word "and/or" corrects an antecedent basis error that was not identified by the Examiner or Appellants during the prosecution of the patent application. Appellants also amended claim 73 to substitute the word "axes" for the word "axles" between the words "said" and "when" in line 2. The substitution of the word "axes" for the word "axles" corrects an antecedent basis error that was not identified by the Examiner or Appellants during the prosecution of the patent application. Appellants believe that this amendment is at least in part the basis for the Examiner asserting that the proposed amendment raises a new issue of matter. In the final Office Action, the Examiner objected to claims 48, 56 and 74 under 35 U.S.C. §112, first paragraph, for containing new matter. During the prosecution of the above-identified patent application, claim 48 was amended to substitute the word "axes" for the word "axles"; however, claim 73, which depended from claim 48 was not amended to make a corresponding change. The substitution of the word "axes" for the word "axles" corrects this antecedent basis error. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 73. Appellants submit that these amendments to claim 73 do not raise an issue of new matter.

Claim 74 was proposed to be amended to insert the word "a" between the words "moving" and "welder" and the words "or" and "power" in line 1. The inclusion of the word "a" corrects a grammatical error in the claim that was not identified by the Examiner or Appellants during the

prosecution of the patent application. Claim 74 was also proposed to be amended to substitute the word "axles" for the word "axes" in line 5. Appellants, upon further review of the claim, have determined that such proposed amendment should not have been made. Therefore, Appellants withdraw this proposed amendment. Appellants have also determined that the word "base" needs to be changed to the phrase "base structure" to maintain terminology uniformity in the claim. This error was not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 74. Appellants submit that these amendments to claim 74 do not raise an issue of new matter.

Claim 75 has been amended to substitute the word "axes" for the word "axles" in line 2 to correct an antecedent basis error that was not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect this amendment to claim 75. Appellants submit that this amendment to claim 75 does not raise an issue of new matter.

Claim 82 was proposed to be amended to substitute the word "or" for the word "and/or" between the words "welder" and "power" in lines 2, 3, and 4. The substitution of the word "or" for the word "and/or" corrects an antecedent basis error that was not identified by the Examiner or Appellants during the prosecution of the patent application. Upon further review of claim 82, Appellants have determined that the word "base" needs to be changed to the phrase "base structure" to correct an antecedent basis error in claim 82. This antecedent basis error was also not identified by the Examiner or Appellants during the prosecution of the patent application. In addition, the word "axles" must be changed to "axes" in line 3 to correct an antecedent basis error in claim 82.

This antecedent basis error was also not identified by the Examiner or Appellants during the prosecution of the patent application. The Amendment for Appeal and the Corrected Appendix of Claims reflect these amendments to claim 82. Appellants submit that these amendments to claim 82 do not raise an issue of new matter.

Appellants attach hereto an Amendment for Appeal and a Corrected Appendix of Claims, which reflects the changes to the claims set forth in the Amendment for Appeal. Appellants submit that the amendments to the claims are proper and should be entered for purposes of the present Appeal.

IV. CHANGES TO APPEAL BRIEF FILED DECEMBER 31, 2001

As indicated above, several modifications to the claims were made to correct several grammatical and antecedent basis errors in the claims. Because these amendments to the claims do not alter the scope of the claims, the substantive arguments relating to the patentability of the rejected claims set forth in the Appeal Brief remain the same. Two statements in the Appeal Brief concerning claims 48 and 74 will be slightly affected. For instance, when claim 48 is discussed in the Seventh Issue on pages 32-35 of the Appeal Brief, the reference to "base" should be "base structure" as set forth above. Similarly, when claim 74 is discussed in the Seventh Issue on pages 35-36, the reference to "base" should be "base structure" as set forth above. Additionally, the reference to "axles" in claim 74 should be "axes" as set forth above. These examples are believed to be the only changes that need to be considered in the body of the Appeal Brief. If required, Appellants will file a revised Appeal Brief to reflect these changes.

Appellants request that the Amendment for Appeal be entered by the Examiner to place the claims in better form for appeal. Appellants submit that the amendments to the claims do not raise any new issues.

Respectfully submitted,
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CORRECTED APPENDIX OF CLAIMS

Claims on Appeal

1. A moveable undercarriage for supporting and moving a welder and/or power supply over a ground surface comprising a base to support the welder and/or power supply, a front and rear axle secured to said base, two front wheels rotatably secured to said front axle, two rear wheels rotatably secured to said rear axle, and a push bar secured to said base, said rear wheels having a
5 radius that is greater than a radius of said front wheels, said base having a generally flat top surface lying in a plane generally parallel to a flat ground surface, said front and rear axles positioned on said base such that a center of gravity of the welder and/or power supply lies between said axles, said front and rear axle spaced apart along a longitudinal axis of said base at a distance less than about 3 times the sum of the radii of said front and rear wheels.

2. The undercarriage as defined in claim 1, wherein the spacing between said front and rear axles is between about 1.0-1.5 times the sum of the radii of said front and rear wheels.

3. The undercarriage as defined in claim 1, wherein the ratio of said rear wheel radius to said front wheel radius is between 1:1 to 2.5:1.

4. The undercarriage as defined in claim 2, wherein the ratio of said rear wheel radius to said front wheel radius is between 1:1 to 2.5:1.

5. The undercarriage as defined in claim 1, wherein said base includes two side edges and side flanges connected thereto and extending downwardly therefrom, at least one axle secured to said side flanges.

6. The undercarriage as defined in claim 4, wherein said base includes two side edges and side flanges connected thereto and extending downwardly therefrom, at least one axle secured to said side flanges.

7. The undercarriage as defined in claim 5, wherein said side flanges having a forward section positioned forwardly of said front axle and a mid-section positioned between said front and rear axle, said flange mid-section extending downwardly a length that is greater than the downward length of said forward section.

8. The undercarriage as defined in claim 6, wherein said side flanges having a forward section positioned forwardly of said front axle and a mid-section positioned between said front and rear axle, said flange mid-section extending downwardly a length that is greater than the downward length of said forward section.

9. The undercarriage as defined in claim 1, wherein said front wheels are positioned rearwardly of a front edge of said base and said rear wheels are positioned forwardly of a rear edge of said base.

10. The undercarriage as defined in claim 8, wherein said front wheels are positioned rearwardly of a front edge of said base and said rear wheels are positioned forwardly of a rear edge of said base.

11. The undercarriage as defined in claim 1, including a brake, said brake including a brake plate secured to a brake arm, a brake arm pivotally connected to said base to move said brake plate into contact and out of contact with at least one of said rear wheels, and a brake bar movable between a locked and unlocked position, said brake bar in said locked position engaging said brake
5 arm to move said brake plate into contact with said rear wheel.

12. The undercarriage as defined in claim 10, including a brake, said brake including a brake plate secured to a brake arm, a brake arm pivotally connected to said base to move said brake plate into contact and out of contact with at least one of said rear wheels, and a brake bar movable between a locked and unlocked position, said brake bar in said locked position engaging said brake
5 arm to move said brake plate into contact with said rear wheel.

13. The undercarriage as defined in claim 1, wherein said push bar including a base section, a middle section and a handle section, said base section secured to said base, said middle section attached to said base section at an angle of about 15-70°, said handle section attached to said middle section at an angle of about 15-70°, said handle section lying in a plane generally
5 perpendicular to said ground surface.

14. The undercarriage as defined in claim 12, wherein said push bar including a base section, a middle section and a handle section, said base section secured to said base, said middle section attached to said base section at an angle of about 15-70°, said handle section attached to said middle section at an angle of about 15-70°, said handle section lying in a plane generally
5 perpendicular to said ground surface.

15. The undercarriage as defined in claim 14, wherein said base section lies in a plane that is non-parallel to said top surface plane of said base.

16. The undercarriage as defined in claim 1, including a lift bar secured to said push bar.

17. The undercarriage as defined in claim 4, including a lift bar secured to said push bar.

18. The undercarriage as defined in claim 15, including a lift bar secured to said push bar.

19. The undercarriage as defined in claim 1, including at least one hook arrangement secured to said push bar.

20. The undercarriage as defined in claim 18, including at least one hook arrangement secured to said push bar.

21. The undercarriage as defined in claim 20, including at least one holding compartment secured to said push bar and said hook arrangement.

22. The undercarriage as defined in claim 1, including a bumper flange secured to the front edge of said base.

23. The undercarriage as defined in claim 21, including a bumper flange secured to the front edge of said base.

24. The undercarriage as defined in claim 1, wherein said base having a length and a width at least equal to a length and a width of the welder and/or power supply.

25. The undercarriage as defined in claim 23, wherein said base having a length and a width at least equal to a length and a width of the welder.

26. The undercarriage as defined in claim 5, wherein said side flanges each including at least three axle openings being generally aligned with one another.

27. The undercarriage as defined in claim 6, wherein said side flanges each including at least three axle openings being generally aligned with one another.

28. The undercarriage as defined in claim 25, wherein said side flanges each including at least three axle openings being generally aligned with one another.

29. The undercarriage as defined in claim 1, wherein said base is rearwardly rotatable about said rear wheels between a fully tilted position and a non-tilted position, said center of gravity of said welder and/or power supply lying on or forwardly of said rear axle and rearwardly of said front axle when said base is in said fully tilted position.

30. The undercarriage as defined in claim 4, wherein said base is rearwardly rotatable about said rear wheels between a fully tilted position and a non-tilted position, said center of gravity of said welder and/or power supply lying on or forwardly of said rear axle and rearwardly of said front axle when said base is in said fully tilted position.

31. The undercarriage as defined in claim 28, wherein said base is rearwardly rotatable about said rear wheels between a fully tilted position and a non-tilted position, said center of gravity of said welder and/or power supply lying on or forwardly of said rear axle and rearwardly of said front axle when said base is in said fully tilted position.

48. A moveable undercarriage for supporting and moving a welder or a power supply over a ground surface comprising a base structure, at least one front wheel rotatably secured to said base structure, at least one rear wheel rotatable secured to said base structure, and a push bar secured to said base structure, said rear wheel having a radius that is equal to or greater than a radius of said

5 front wheel, said at least one front wheel and said at least one rear wheel rotating about axes positioned on said base structure such that a center of gravity of the welder or power supply lies on or between said axes, said axes being spaced apart along the longitudinal axis of said base structure so that the spacing is less than about 3 times the sum of the radii of said front and rear wheels.

49. The undercarriage as defined in claim 48, wherein said welder or power supply is positioned in said base structure.

50. The undercarriage as defined in claim 49, wherein said welder or power supply is secured to said base structure.

52. The undercarriage as defined in claim 48, including at least one axle secured to said base structure, said rear wheel rotatably secured to said axle.

53. The undercarriage as defined in claim 48, including at least one axle secured to said base structure, said front wheel rotatably secured to said axle.

54. The undercarriage as defined in claim 48, including at least one spindle secured to said base structure, said rear wheel rotatably secured to said spindle.

55. The undercarriage as defined in claim 48, including at least one spindle secured to said base structure, said front wheel rotatably secured to said spindle.

56. The undercarriage as defined in claim 48, wherein the spacing between said axes of said front and rear wheels is between about 1.0-1.5 times the sum of the radii of said front and rear wheels.

57. The undercarriage as defined in claim 48, wherein said at least one front wheel positioned rearwardly of a front edge of said base structure and said at least one rear wheel positioned forwardly of a rear edge of said base structure.

58. The undercarriage as defined in claim 48, including a brake, said brake including a brake plate which is moveable into and out of contact with said at least one rear wheel.

59. The undercarriage as defined in claim 58, including a brake bar movable between a locked and unlocked position, said brake bar causing said brake plate to move into contact with said at least one rear wheel when said brake bar is moved into the locked position.

60. The undercarriage as defined in claim 48, wherein said push bar including a base section and a middle section, said base section connected to said middle section at an angle of about 15° - 90° .

61. The undercarriage as defined in claim 48, including a lift bar secured to said push bar.

71. The undercarriage as defined in claim 1, wherein said center of gravity of the welder and/or power supply lies on or between said axles when the welder and/or power supply is a non-tilted portion on a generally flat ground surface and when the welder and/or power supply is in a tilted position on a generally flat ground surface.

72. The undercarriage as defined in claim 2, wherein said center of gravity of the welder and/or power supply lies on or between said axles when the welder and/or power supply is a non-tilted portion on a generally flat ground surface and when the welder and/or power supply is in a tilted position on a generally flat ground surface.

73. The undercarriage as defined in claim 48, wherein said center of gravity of the welder or power supply lies on or between said axes when the welder or power supply is a non-tilted portion on a generally flat ground surface and when the welder or power supply is in a tilted position on a generally flat ground surface.

74. A moveable undercarriage for supporting and moving a welder or a power supply over a ground surface comprising a base structure, at least one front wheel rotatably secured to said base structure, at least one rear wheel rotatable secured to said base structure, and a push bar secured to said base structure, said rear wheel having a radius that is equal to or greater than a radius of said front wheel, said at least one front wheel and said at least one rear wheel rotating about axes positioned on said base structure which are spaced apart along the longitudinal axis of said base

structure so that the spacing is less than about 2 times the sum of the radii of said front and rear wheels.

75. The undercarriage as defined in claim 74, wherein the spacing between said front and rear axes is between about 1.0-1.5 times the sum of the radii of said front and rear wheels.

82. The undercarriage as defined in claim 74, wherein said front and rear axles positioned on said base structure such that a center of gravity of the welder or power supply lies on or between said axes when the welder or power supply is in a non-tilted position on a generally flat ground surface and when the welder or power supply is in a tilted position on a generally flat ground surface.